Yong Ing Kai & Anor v Superintendent of Lands and Surveys Kuching Division

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(f)-1–01 OF 2022(Q)
ABDUL RAHMAN SEBLI CJ (SABAH AND SARAWAK), ZABARIAH YUSOF AND MARY LIM FCJJ
9 OCTOBER 2023

Land Law — Acquisition of land — Delay in holding enquiry — Appellants' lands were compulsorily acquired for public purpose — Compensation was only made 14 years after s 47 notice under Sarawak Land Code ('SLC') was issued and two years after s 48 declaration under SLC was made — Appellants appealed to High Court against inadequacy of compensation — High Court allowed appeal and held market value of lands should be computed from date of s 48 declaration and not s 47 notice — Whether High Court had no power to vary mandatory requirement in s 60(1)(a) of SLC that market value at date of s 47 notice shall be adopted — Whether SLC was not a law that could be modified by court under art 162(6) of Federal Constitution ('the FC') to make it accord with art 13 of FC — Whether appellants had been fairly and adequately compensated as award made by Superintendent of Lands and Surveys had provided for annual 4% increment in market value of acquired lands for 15 years to make up for the delay in holding the land enquiry — Whether Court of Appeal's decision in Superintendent of Lands & Surveys Samarahan Division v Surianto bin Abdul Hamid & Anor [2016] MLJU 1712 should prevail over that in Jais bin Chee & Ors v Superintendent of Lands and Surveys Kuching Division, Kuching [2014] 6 MLJ 439

The Federal Court in the instant appeal was essentially asked to decide which of two decisions of the Court of Appeal ('COA') was the correct one in assessing compensation for compulsory acquisition of land under the Sarawak Land Code ('SLC') — whether it was the COA's decision in *Jais bin Chee & Ors v Superintendent of Lands and Surveys Kuching Division, Kuching* [2014] 6 MLJ 439 ('Jais Chee') or the one in *Superintendent of Lands & Surveys Samarahan Division v Surianto bin Abdul Hamid & Anor* [2016] MLJU 1712 ('Surianto'). The two COA decisions conflicted over their interpretation of s 60(1)(a) of the SLC which stated that in determining the amount of compensation for compulsory acquisition of land, the court shall consider 'the market value at the date of publication of the notification under s 47 or, if no such notification has been published, the market value at the date of posting of the declaration made under s 48'. The s 47 notice by the respondent merely gave public notice that certain lands were likely to be compulsorily acquired. The s 48 declaration by the Minister, however, was 'conclusive evidence' that the subject lands were

needed for the purpose specified in the declaration. In *Jais Chee*, because the respondent had delayed the holding of the land enquiry for nine years, during which time the land had appreciated in value, the COA read s 60(1)(a) of the SLC together with art 13 of the Federal Constitution ('the FC') to hold that the market value at the time the s 48 declaration was made should be taken to assess the compensation and not the market value at the time the earlier s 47 notice was issued. *Surianto* disagreed with *Jais Chee* and held that the requirement in s 60(1)(a) of the SLC was mandatory and that the court had no power to depart from it or modify it under art 162(6) of the FC so that it accorded with art 13 of the FC. *Surianto* held that whilst the market value of the acquired lands when the s 47 notice was issued must be taken, in cases where compensation had been inordinately delayed, an upward adjustment in the compensation amount should be made to make up for the delay. In the instant appeal, the respondent had issued the s 47 notice on 16 July 1997. The s 48 declaration was *gazetted* 12 years later, on 2 July 2009. The land enquiry was held two years after that, on 21 November 2011. The respondent awarded the appellants a total compensation of RM255,051.97. Dissatisfied with the award, the appellants had the matter referred to the High Court for determination under s 56 of the SLC. Following *Jais Chee*, the High Court ruled that because of the unexplained, inordinate delay, the market value of the lands ought to be taken as at the date of the s 48 declaration and not as at the date of the s 47 notice. The High Court adopted the valuations given by the appellants and increased the total compensation to RM333,512.30. On the respondent's appeal, the COA, following *Surianto*, set aside the High Court's decision and restored the respondent's award. The COA held that the appellants had been fairly and adequately compensated because the respondent's award had provided for an annual increase of 4% to the market value of the acquired lands for 15 years from the date of the s 47 notice in July 1997 until the date the lands were resumed in January 2012 so that the amount of compensation finally worked out to RM31.50 per sqmt. The appellants took the view that the said upward adjustment was still not adequate compensation and felt that it could not make up for the higher compensation they would have obtained if the market value as at the date of the s 48 declaration had been adopted and that, consequently, art 13(2) of the FC had been breached. In the instant appeal, the appellants contended that s 60 of the SLC should be read in modification so that it accorded with art 13(2) of the FC to provide fair and adequate compensation in cases where there was inordinate and unexplained delay in the holding of the land enquiry.

Held, unanimously dismissing the appeal:

(1) **(per Abdul Rahman Sebli CJ (Sabah and Sarawak))** Having considered the conflicting decisions of the COA in *Jais Chee* and *Surianto* carefully, this court was inclined to agree with *Surianto* and the pronouncement therein that it was unnecessary to go so far as to invoke

art 13(2) of the FC to determine adequacy of compensation in a land reference (see paras 37 & 45). A

(2) **(per Abdul Rahman Sebli CJ (Sabah and Sarawak))** Section 60(1)(a) of the SLC was clear and unambiguous in that compensation was to be assessed by considering the market value of the acquired land at the date of the s 47 notice, and only if there was no such notification was the market value at the date of the s 48 declaration to be considered. In the present case, there was no dispute that there was a notification issued under s 47 of the SLC (see para 26). B

(3) **(per Abdul Rahman Sebli CJ (Sabah and Sarawak))** There was no merit in the instant appeal as the appellants had been adequately, fairly and reasonably compensated by having the compensation sum adjusted upward to make up for the delay in the making of the award. The respondent had provided for an annual increase of 4% to the market value of the acquired lands from July 1997 (when the s 47 notice was issued) up till the date of resumption in January 2012 to ensure that the appellants were paid a fair and reasonable compensation. This approach had ensured compliance with s 60(1)(a) of the SLC read with art 13 of the FC. No injustice was occasioned by the COA's decision (see paras 12 & 62). C D E

(4) **(per Abdul Rahman Sebli CJ (Sabah and Sarawak))** Section 60(1)(a) of the SLC was not a law that was capable of being modified by the court under art 162(6) of the FC so as to bring it into accord with art 13, as was done in *Jais Chee*. This was because s 60(1)(a) was not a pre-Merdeka Day law (it came into operation on 1 January 1958), nor was Sarawak even part of the Federation at the time of its enactment. The court's power to modify under art 162(2) was only exercisable in respect of laws that were in operation in the Federation or any part thereof immediately before 31 August 1957. Pursuant to s 74(4) of the Malaysia Act 1963, the power to modify a State law in Sabah or Sarawak could only be exercised by the Yang di-Pertuan Agong at the request of the Yang di-Pertua Negeri of either Sabah or Sarawak (see paras 31, 48, 52 & 61). F G

(5) **(per Mary Lim FCJ, supporting)** After offering the best comparative value of RM17.50 per sqmt and recognising the matter of delay, the government valuer recommended a compounded interest rate of 4%pa for 15 years from the date of issuance of the s 47 notice in 1997 up until the date of the resumption of the lands in 2012 calculated by reference to the date of the s 47 notice. The market value of the subject lands was then opined to be RM31.50 per sqmt, increased from RM17.50 per sqmt. As for the market value calculated by reference to the s 48 declaration, the government valuer opined that the appropriate market value was also within the range of RM30 to RM32 per sqmt. The appellants' valuation report, on the other hand, offered the value of RM10.30 per sqmt as at H I

the date of the s 47 notice without the element of interest and values of RM41 and RM42 per sqmt for a valuation under the s 48 declaration. The respondent's compensation award was based on a value of RM32 per sqmt, which was actually the value under the s 48 declaration. Hence, there was really no cause for the appellants to complain (see paras 84–86 & 90).

(6) **(per Mary Lim FCJ, supporting)** The High Court judge disagreed with the respondent's award, rejected the opinion and exercise of upward adjustment by the government valuer, and took the view that even with any upward adjustment, the amount of compensation would still be far less than the value of the land as at the s 48 declaration. The judge then accepted the appellants' valuation and increased the award to RM333,512.30. It was not open to the High Court to take the course that it did in view of the clear terms of s 60 of the SLC. Sections 47 and 48 read together with s 60(1)(a) of the SLC were enacted to provide for adequate compensation of any land resumed by the State Government. Any delay in carrying out any exercise to determine the adequacy of compensation did not alter that intent (see paras 86 & 89).

(7) **(per Mary Lim FCJ, supporting)** Although the COA allowed the respondent's appeal and ordered compensation to be paid by reference to the date of the s 47 notice and supposedly restored the respondent's award, it must be pointed out that in actuality, it was not. The value under the s 47 notice was RM31.50 per sqmt whereas the value under the s 48 notice was a range between RM30 and RM32 per sqmt. The respondent had awarded compensation at the rate of RM32 per sqmt, clearly a value under s 48 and not s 47 (see para 91).

(8) **(per Mary Lim FCJ, supporting)** The market values of the subject lands were effectively similar, whether under the s 47 or the s 48 notice. Having bought the subject lands the year before the s 47 notice at the price of RM10.30 per sqmt, the appellants were ultimately paid RM32 per sqmt for the resumption. Such compensation could not be said to be inadequate by the terms of art 13 of the Federal Constitution, even if the modification exercise could be undertaken in law (see para 92).

[Bahasa Malaysia summary

Mahkamah Persekutuan dalam rayuan semasa pada dasarnya diminta untuk memutuskan yang mana antara dua keputusan Mahkamah Rayuan ('MR') adalah yang betul dalam menaksir pampasan bagi pengambilan wajib tanah di bawah Kanun Tanah Sarawak ('KTS') — sama ada ia adalah keputusan MR dalam *Jais bin Chee & Ors v Superintendent of Lands and Surveys Kuching Division, Kuching* [2014] 6 MLJ 439 ('Jais Chee') atau yang dalam *Superintendent of Lands & Surveys Samarahan Division v Surianto bin Abdul Hamid & Anor* [2016] MLJU 1712 ('Surianto'). Kedua-dua keputusan MR

tersebut bercanggah berkenaan tafsiran mereka terhadap s 60(1)(a) KTS yang menyatakan bahawa dalam menentukan jumlah pampasan bagi pengambilan tanah secara wajib, mahkamah hendaklah mempertimbangkan 'nilai pasaran pada tarikh pengeluaran notis di bawah s 47 atau, jika tiada notis sedemikian telah dikeluarkan, nilai pasaran pada tarikh penampalan pengisytiharan yang dibuat di bawah s 48'. Notis s 47 oleh responden hanya memberi notis umum bahawa tanah tertentu berkemungkinan diambil secara wajib. Perisytiharan s 48 oleh Menteri, bagaimanapun, adalah 'keterangan konklusif' bahawa tanah tersebut diperlukan untuk tujuan yang dinyatakan dalam perisytiharan. Dalam *Jais Chee*, kerana responden telah menangguhkan mengadakan siasatan tanah selama sembilan tahun, yang mana pada masa itu nilai tanah meningkat, MR membaca s 60(1)(a) KTS bersama-sama dengan perkara 13 Perlembagaan Persekutuan ('PP') dalam memutuskan bahawa nilai pasaran pada masa pengisytiharan s 48 dibuat harus diambilkira untuk menaksir pampasan dan bukannya nilai pasaran pada masa notis s 47 terdahulu dikeluarkan. *Surianto* bercanggah dengan *Jais Chee* dan memutuskan bahawa keperluan dalam s 60(1)(a) KTS adalah mandatori dan mahkamah tidak mempunyai kuasa untuk beralih daripadanya atau mengubahnya di bawah perkara 162(6) PP supaya ia selaras dengan perkara 13 PP. *Surianto* memutuskan bahawa meskipun nilai pasaran tanah yang diambil semasa notis s 47 dikeluarkan harus diambil kira, dalam kes di mana pampasan telah dilewatkan secara melampau, pelarasan menaik dalam jumlah pampasan perlu dibuat untuk mengimbangi kelewatan tersebut. Dalam rayuan semasa, responden telah mengeluarkan notis s 47 pada 16 Julai 1997. Pengisytiharan s 48 telah diwartakan 12 tahun kemudian, pada 2 Julai 2009. Siasatan tanah telah dijalankan dua tahun selepas itu, pada 21 November 2011. Responden membenarkan perayu sejumlah pampasan sebanyak RM255,051.97. Tidak berpuas hati dengan award tersebut, perayu-perayu telah merujuk perkara tersebut kepada Mahkamah Tinggi untuk ditentukan di bawah s 56 KTS. Dalam mengikut *Jais Chee*, Mahkamah Tinggi memutuskan bahawa kerana kelewatan melampau yang tidak dapat dijelaskan, nilai pasaran tanah-tanah tersebut perlu diambil pada tarikh pengisytiharan s 48 dan bukan pada tarikh notis s 47. Mahkamah Tinggi menerima pakai penilaian yang diberikan oleh perayu dan meningkatkan jumlah pampasan kepada RM333,512.30. Atas rayuan responden, MR, dalam mengikuti *Surianto*, mengetepikan keputusan Mahkamah Tinggi dan memulihkan award responden. MR memutuskan bahawa perayu telah diberi pampasan yang adil dan mencukupi kerana award responden telah memperuntukkan kenaikan tahunan sebanyak 4% kepada nilai pasaran tanah yang diambil selama 15 tahun dari tarikh notis s 47 pada Julai 1997 sehingga tarikh tanah telah disambung semula pada Januari 2012 supaya jumlah pampasan akhirnya mencapai RM31.50 sekaki persegi. Perayu-perayu berpandangan bahawa pelarasan menaik tersebut masih tidak mencukupi dan merasakan bahawa ia tidak dapat menampung pampasan yang lebih tinggi yang akan mereka perolehi sekiranya nilai pasaran pada tarikh pengisytiharan s 48 telah diterima pakai dan bahawa, dengan itu, perkara 13(2) PP telah

dilanggar. Dalam rayuan semasa, perayu-perayu berhujah bahawa s 60 KTS perlu dibaca dalam pengubahsuaian supaya ia selaras dengan perkara 13(2) PP untuk menyediakan pampasan yang adil dan mencukupi dalam kes-kes di mana terdapat kelewatan yang melampau dan tidak dapat dijelaskan dalam mengadakan siasatan tanah.

Diputuskan, sebulat suara menolak rayuan:

(1) **(oleh Abdul Rahman Sebli KH (Sabah and Sarawak))** Setelah mempertimbangkan percanggahan keputusan MR dalam *Jais Chee* dan *Surianto* secara teliti, mahkamah ini cenderung bersetuju dengan *Surianto* dan pernyataan di dalamnya bahawa ia adalah tidak perlu pergi sejauh itu dalam mengguna pakai perkara 13(2) PP dalam menentukan kecukupan pampasan dalam rujukan tanah (lihat perenggan 37 & 45).

(2) **(oleh Abdul Rahman Sebli KH (Sabah and Sarawak))** Seksyen 60(1)(a) KTS adalah jelas dan nyata bahawa pampasan akan ditaksir dengan mempertimbangkan nilai pasaran tanah yang diambil pada tarikh notis s 47, dan hanya jika tiada notis sedemikian adalah nilai pasaran pada tarikh pengisytiharan s 48 akan dipertimbangkan. Dalam kes semasa, tiada pertikaian bahawa terdapat notis yang dikeluarkan di bawah s 47 KTS (lihat perenggan 26).

(3) **(oleh Abdul Rahman Sebli KH (Sabah and Sarawak))** Tiada merit dalam rayuan semasa kerana perayu-perayu telah diberi pampasan yang mencukupi, adil dan munasabah dengan menyelaraskan jumlah pampasan menaik untuk mengimbangi kelewatan dalam membuat award. Responden telah diperuntukkan dengan kenaikan tahunan sebanyak 4% kepada nilai pasaran tanah yang diambil dari Julai 1997 (semasa notis s 47 dikeluarkan) sehingga tarikh penyambungan semula pada Januari 2012 untuk memastikan perayu dibayar dengan pampasan yang adil dan berpatutan. Pendekatan ini telah memastikan pematuhan dengan s 60(1)(a) KTS yang dibaca dengan perkara 13 PP. Tiada ketidakadilan berlaku oleh keputusan MR (lihat perenggan 12 & 62).

(4) **(oleh Abdul Rahman Sebli KH (Sabah and Sarawak))** Seksyen 60(1)(a) KTS bukanlah undang-undang yang boleh diubah suai oleh mahkamah di bawah perkara 162(6) PP supaya ia selaras dengan perkara 13, seperti yang dilakukan dalam *Jais Chee*. Ini kerana s 60(1)(a) bukanlah undang-undang sebelum Hari Merdeka (ia mula berkuat kuasa pada 1 Januari 1958), malah Sarawak juga bukan sebahagian daripada Persekutuan pada masa penggubalannya. Kuasa mahkamah untuk mengubah suai di bawah perkara 162(2) hanya boleh dilaksanakan berkenaan dengan undang-undang yang berkuat kuasa di Persekutuan atau mana-mana bahagiannya sebaik sebelum 31 Ogos 1957. Menurut s 74(4) Akta Malaysia 1963, kuasa untuk mengubah suai undang-undang Negeri di Sabah atau Sarawak hanya boleh dilaksanakan oleh Yang

di-Pertuan Agong atas permintaan Yang di-Pertua Negeri Sabah atau Sarawak (lihat perenggan 31, 48, 52 & 61).

(5) **(per Mary Lim HMP, menyokong)** Selepas menawarkan nilai perbandingan terbaik sebanyak RM17.50 semeter persegi ('smp') dan menyedari perkara kelewatan, penilai kerajaan mengesyorkan kadar faedah terkompaun sebanyak 4% setahun selama 15 tahun dari tarikh pengeluaran notis s 47 pada tahun 1997 sehingga tarikh penyambungan semula tanah pada tahun 2012 dikira dengan merujuk kepada tarikh notis s 47. Nilai pasaran tanah-tanah tersebut kemudiannya berpendapat menjadi RM31.50 smp, meningkat daripada RM17.50 smp. Bagi nilai pasaran yang dikira dengan merujuk kepada pengisytiharan s 48, penilai kerajaan berpendapat nilai pasaran yang sesuai juga berada dalam lingkungan RM30 hingga RM32 psm. Laporan penilaian perayu pula menawarkan nilai RM10.30 psm pada tarikh notis s 47 tanpa unsur faedah dan nilai RM41 dan RM42 smp untuk penilaian di bawah pengisytiharan s 48. Pemberian pampasan responden adalah berdasarkan nilai RM32 smp, yang sebenarnya adalah nilai di bawah perisytiharan s 48. Oleh itu, tiada sebab untuk perayu mengadu (lihat perenggan 85–86 & 90).

(6) **(per Mary Lim HMP, menyokong)** Hakim Mahkamah Tinggi tidak bersetuju dengan award responden, menolak pendapat dan melaksanakan pelarasan menaik oleh penilai kerajaan, dan mengambil pandangan bahawa walaupun dengan sebarang pelarasan menaik, amaun pampasan masih jauh lebih rendah daripada nilai tanah seperti pada perisytiharan s 48. Hakim kemudiannya menerima penilaian perayu dan menaikkan award kepada RM333,512.30. Ia tidak terbuka kepada Mahkamah Tinggi untuk mengikuti jalan yang telah dilakukannya memandangkan terma jelas s 60 KTS. Seksyen 47 dan 48 dibaca bersama s 60(1)(a) KTS telah digubal untuk menyediakan peruntukan bagi pampasan yang mencukupi bagi mana-mana tanah yang disambung semula oleh Kerajaan Negeri. Sebarang kelewatan dalam menjalankan sebarang tindakan untuk menentukan kecukupan pampasan tidak mengubah niat tersebut (lihat perenggan 86 & 89).

(7) **(per Mary Lim HMP, menyokong)** Walaupun MR membenarkan rayuan responden dan mengarahkan pampasan dibayar dengan merujuk kepada tarikh notis s 47 dan kononnya mengembalikan semula award responden, ia mesti ditegaskan bahawa sebenarnya, ia tidak. Nilai di bawah notis s 47 adalah RM31.50 smp manakala nilai di bawah notis s 48 adalah antara RM30 dan RM32 smp. Responden telah memberikan pampasan pada kadar RM32 smp, denagn jelas nilai di bawah s 48 dan bukan s 47 (lihat perenggan 91).

(8) **(per Mary Lim HMP, menyokong)** Nilai pasaran tanah tersebut adalah secara efektif serupa, sama ada di bawah notis s 47 atau s 48. Setelah

membeli tanah tersebut tahun sebelum notis s 47 pada harga RM10.30 smp, perayu akhirnya dibayar RM32 smp untuk penyambungan semula. Pampasan sedemikian tidak boleh dikatakan tidak mencukupi mengikut terma perkara 13 PP, walaupun jika pengubahsuaian tersebut boleh dilakukan dalam undang-undang (lihat perenggan 92).]

Cases referred to

AJS v JMH and another appeal [2022] 1 MLJ 778; [2022] 1 CLJ 331, FC (refd)
Ann Joo Steel Bhd v Pengarah Tanah dan Galian Negeri Pulau Pinang & Anor and another appeal [2020] 1 MLJ 689; [2019] 9 CLJ 153, FC (refd)
Buan Joong Sdn Bhd v Superintendent of Lands & Surveys Kuching Division [2005] 5 MLJ 404; [2005] 2 CLJ 910, CA (refd)
Bursa Malaysia Securities Bhd v Mohd Afrizan bin Husain [2022] 3 MLJ 450; [2022] 4 CLJ 657, FC (refd)
Datuk Bandar Kuala Lumpur v Perbadanan Pengurusan Trellises & Ors and other appeals [2023] 3 MLJ 829; [2023] 5 CLJ 167, FC (refd)
Datuk James Wong Kim Min, Re; Minister of Home Affairs, Malaysia & Ors v Datuk James Wong Kim Min [1976] 2 MLJ 245; [1976] 1 LNS 129, FC (refd)
Jais bin Chee & Ors v Superintendent of Lands and Surveys Kuching Division, Kuching [2014] 6 MLJ 439; [2014] 3 CLJ 467, CA (refd)
Kerajaan Negeri Selangor & Ors v Sagong Bin Tasi & Ors [2005] 6 MLJ 289; [2005] 4 CLJ 169, CA (distd)
Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors [1988] 3 MLJ 82; [1988] 1 CLJ Rep 224, SC (refd)
Ngu Toh Tung & Ors v Superintendent of Lands & Survey, Kuching Division, Kuching & Anor [2006] 1 MLJ 142; [2006] 1 CLJ 30, CA (refd)
Pemungut Hasil Tanah Daerah Barat Daya, Penang v Kam Gin Paik & Ors [1986] 1 MLJ 362; [1986] 1 CLJ 33, PC (refd)
Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee [1983] 2 MLJ 35; [1982] MLRA 624, FC (refd)
Pemungut Hasil Tanah, Kuantan v Oriental Rubber & Palmoil Sdn Bhd [1986] 1 MLJ 39, SC (refd)
Superintendent of Lands & Surveys, Fifth Division, Limbang v Lim Teck Hoo & Anor [1980] 1 MLJ 58; [1979] 1 MLRA 9, FC (folld)
Superintendent of Lands & Surveys Samarahan Division v Surianto bin Abdul Hamid & Anor [2016] MLJU 1712; [2016] 3 CLJ 591, CA (folld)
Superintendent of Land and Survey Department Kuching-Divisional Office & Anor v Ratnawati bt Hasbi Mohamad Suleiman [2020] 2 MLJ 553; [2020] 2 CLJ 425; [2020] 1 MLRA 385, FC (distd)
Superintendent of Lands and Surveys, Kuching Division v Robert Lee Chang Hock [2017] 1 MLJ 511, CA (refd)
Tan Kah Fatt & Anor v Tan Ying [2023] 2 MLJ 583; [2023] 2 MCLR 525, FC (refd)

Tan Kheng Pang v Superintendent of Lands & Surveys (Land Reference Nos 15–3–2007–III and 15–4–2007–I) (unreported), HC (refd)

Legislation referred to

Aboriginal Peoples Act 1954 s 12
Constitution of the State of Sarawak arts 44, 46(3)(a), (4)(a)
Federal Constitution arts 4(1), 13, 13(2), 160, 162(6)
Interpretation Acts 1948 and 1967 ss 17A, 66
Land Acquisition Act 1960 s 8(4), First Schedule, para 1(1)
Land Code (Cap 81) ss 46, 47, 48, 48(2), 49, 51, 52, 53, 54, 56, 57, 60, 60(1), (1)(a), 66, 71(2)
Malaysia Act 1963 s 74(4)

Appeal from: *Superintendent of Lands and Surveys Kuching Division v Yong Ing Kai & Anor* [2022] 1 MLJ 609 (Court of Appeal, Putrajaya)

Arthur Lee Cheng Chuan (Sylvester Lai Tze Yang) (Arthur Lee, Lin & Co) for the appellant.
JC Fong (with Ronald Felix Hardin, Beatrice Minda ak Wiston Bale) (Sarawak State Attorney General's Office) for the respondent.

Abdul Rahman Sebli CJ (Sabah and Sarawak) (delivering judgment of the court):

[1] This case is on adequacy of compensation arising from compulsory land acquisition by the Government of Sarawak through the respondent. The High Court had allowed the appellants' claim and adjusted the compensation sum upwards but dismissed their claim for damages. However the Court of Appeal reversed the decision and set aside the adjusted compensation sum and restored the sum awarded by the respondent, hence the present appeal before us.

[2] The salient facts are as follows. The appellants were formerly the registered proprietors of two parcels of land described as Lot 4000 Block 17 Salak Land District ('Lot 4000') and Lot 5052 Block 17 Salak Land District being part of Lot 4004 Block 17 Salak Land District ('Lot 4004') (collectively 'the subject lands').

[3] By a pre-acquisition notification under s 47 of the Sarawak Land Code (Cap 81) ('the Land Code') dated 16 July 1997, the appellants were put to notice that the subject lands were being considered for compulsory acquisition under s 46 of the Land Code 'for the purpose of Sungai Sarawak Flood Mitigation Channel'.

[4] On 2 July 2009, a declaration under s 48 was *gazetted*. By virtue of s

48(2) of the Land Code, the declaration is 'conclusive evidence' that the subject lands were needed for the purpose specified therein. By this declaration, the whole of Lot 4000 (0.5728 hectare) and part of Lot 4004 (0.2349.15 hectare out of a total of 0.5676 hectare) were acquired by the State Government.

[5] An inquiry under s 51 of the Land Code was held pursuant to which an award was made on 21 November 2011. There was therefore a delay of 12 years from the date of the s 47 notice to the date of the s 48 declaration and 14 years to the date of the award. Compensation in the sum of RM180,795.38 was paid for Lot 4000 and a sum of RM74,256.59 for part of Lot 4004. The appellants accepted the compensation sums under protest and referred the matter to the High Court for determination under s 56 of the Land Code.

[6] The appellants succeeded in the High Court. The learned judge acceded to their argument that compensation ought to be calculated based on the market value of the subject lands at the date of the s 48 declaration (2 July 2009) and not at the date of the s 47 notification (16 July 1997), relying on the Court of Appeal decision in *Jais bin Chee & Ors v Superintendent of Lands and Surveys Kuching Division, Kuching* [2014] 6 MLJ 439; [2014] 3 CLJ 467 ('Jais Chee').

[7] It was held by the learned judge that in cases of inordinate and unexplained delay, it is appropriate to determine compensation based on the value of a more recent sale of an adjacent land as it reflects a realistic and fair market value. I reproduce below the relevant paragraphs of the High Court judgment on this particular issue:

> [7] It must be noted that there had been an inordinate unexplained delay of about 14 years from the date of the s 47 notice (or two years from the date of the s 48 notice) to the date of the inquiry under s 51. This explain why in both valuation report prepared by the objector's valuer (OW2) and the respondent's valuer (RW1), the market value of the subject lands as at date of the s 47 notice and the date of s 48 notice were mentioned.
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> [13] I am aware of another Court of Appeal decision in *Surianto Abdul Hamid v Superintendent of Lands and Surveys Samarahan Division* [2014] 1 LNS 1219, where a different panel of the court decided not to follow *Jais bin Chee*, and, despite the delay in holding the s 51 inquiry, the valuation of the subject land as at s 47 notice was used in determining the fair amount of compensation with an upward adjustment to cater for the time factor.
>
> [14] Both valuer for the objector and the respondent had provided data on the comparable sale of land around the s 48 notice and those sales were transacted at a higher price than the comparable sales at the s 47 notice. In my opinion, even with the necessary upward adjustment on the value of the subject land as at the s 47 notice, the amount of compensation to be awarded would still be far less than the

value of the land as at s 48 notice. With the evidence of such sale before the court, it would be unfair to the objector if the court were to ignore those evidence and made the award base on value of the land as at s 47 notice.

[15] In the present case, there is no explanation as to why it took that long for the respondent to hold such inquiry. Hence, I am of the opinion that such delay is unreasonable. In the digital and IT era there should be no excuse for the delay in holding the enquiry as it would deprived (sic) the objectors from utilising the compensation money at the earliest possible time. In the circumstances, I am of the opinion that, for the purpose of determining the fair amount of compensation, the value of the said land as at the date of s 48 notice should be used.

[8] What the learned judge did was to read s 60 of the Land Code in modification with art 13 of the Federal Constitution and applied *Jais bin Chee*. Accordingly the award was increased by the learned judge to RM234,848 (from RM180,795.38) for Lot 4000 and to RM98,664.30 (from RM74,256.59) for Lot 4004 making a grand total of RM333,512.30. The respondent was ordered to pay the difference between this sum and the sum already paid pursuant to the s 51 inquiry.

[9] Aggrieved by the decision, the respondent appealed to the Court of Appeal and succeeded. The decision of the High Court was reversed and the sum awarded pursuant to the s 51 inquiry was restored. In so deciding the Court of Appeal refused to follow *Jais bin Chee* and instead followed the later decision of the same court in *Superintendent of Lands & Surveys Samarahan Division v Surianto bin Abdul Hamid & Anor* [2016] MLJU 1712; [2016] 3 CLJ 591 ('Surianto') where it was held, inter alia, that the date for valuation is the date of the s 47 notification and not the date of the s 48 declaration.

[10] The Court of Appeal also agreed with *Surianto* that in addressing the issue of adequacy of compensation due to inordinate and unexplained delay, an upward adjustment must be made to the compensation sum based on the factual matrix of each case. It noted that in the present case the respondent had done so by making an upward adjustment to the compensation sum when making the award. After going through the reports of the valuers, the Court of Appeal concluded at para [42] of the judgment:

[42] Therefore, we are of the considered opinion that the respondents have been adequately or reasonably compensated by having annual increase of 4% to the market value of the said Lands from 1997 to 2012. We find that the final rate of RM31.50 per sqmt is a fair and reasonable compensation for the said Lands.

[11] The appellants did not dispute the respondent witness's ('RW1') consideration of time factor adjustment fixed at 4%pa during the trial. RW1 had acknowledged and addressed the time factor by providing a compounded adjustment rate at 4%pa for 15 years, that is from the s 47 notice date of 16 July

A 1997 to the resumption date of 9 January 2012.

[12] Therefore, the market value of the subject lands would have an appreciation of 4%pa, which means the appellants had been adequately, fairly and reasonably compensated by having an annual increase of 4% to the market B value of the subject lands from July 1997 up to the date of resumption in January 2012. This according to the respondent would be fair and equitable and would ensure that the appellants were paid a fair and reasonable compensation for their lands. I agree that this approach had ensured compliance with s 60(1)(a) read with art 13 of the Federal Constitution. C

[13] It is worth noting that the High Court had disagreed with the assessors' opinion in making an upward adjustment of the compensation sum but the Court of Appeal's award is supported by the opinion of the two assessors. It is D therefore incorrect for learned counsel for the appellants to say that the Court of Appeal did not take into account the inordinate and unexplained delay in determining the compensation sum.

[14] Leave to appeal against the decision of the Court of Appeal was E obtained by the appellants to raise the following questions of law (reproduced verbatim below) for this court's determination:

> 1. Unlike section 8 of the Land Acquisition Act 1960 (Act 486) (which does not *(sic)* applicable to Sarawak) which ensured the adequate compensation is not only paid, F but be paid in speedily manner to the Objectors. In the absence of such express provision in pre-merdeka law, Sarawak Land Code, whether Section 60 of the Sarawak Land Code (Cap 81) should be read in modification to be in line with Article 13 of the Federal Constitution, in cases of inordinate and unexplained delay of the State in conducting enquiry pursuant to Section 51 of the Sarawak Land Code, after evaluating the evidence in totality. G
>
> 1.1 If the answer to question (1) is affirmative, whether the decision of the Court of Appeal which failed to carry out such evaluation should be set aside, and the appeal be re-heard by the Court of Appeal or be taken up by way of an appeal to the Federal Court?
>
> H 1.2 If the answer to question (1) is negative, whether the decision of the Court of Appeal in reversing the finding of fact (quantum of compensation) without evaluating the Court of Appeal or be taken up by way of an appeal to the Federal Court.

I **[15]** In essence the appellants are calling for a modification of s 60 of the Land Code to bring it into accord with art 13(2) of the Federal Constitution in order that assessment of compensation could be based on the market value of the subject lands at the date of the declaration under s 48 of the Land Code and not at the date of the s 47 notification.

[16] With due respect the questions could have been better worded. Leave questions should be drafted with precision and with exactitude so as to enable the court to identify what exactly are the issues of law that the aggrieved party wishes the court to determine. The present appeal should be to resolve the conflict between the decisions of the Court of Appeal in *Jais bin Chee* and *Surianto* but the manner in which the leave questions are framed blurs the line between issues of fact and issues of law. Leave questions should be pure unadulterated questions of law.

[17] What is clear however is that the whole complaint is over the inordinate and unexplained delay by the respondent in holding an inquiry under s 51 of the Land Code after issuing the notice of acquisition under s 47 and after making the declaratory order under s 48. The memorandum of appeal (reproduced verbatim below) provides a clearer picture:

> 1. The learned Court of Appeal Judges have erred in law and in facts in deciding that the date for determination of the market value of the Appellants' land ('the subject land') which were acquired statutorily by the Sarawak Government for public purposes, is the date of the Section 47 Notice to determine the compensation to be paid for the subject land, and not the date of the Section 48 Declaration, despite the Court of Appeal have taken cognizance of the undisputed finding of fact that there was a grave unexplained inordinate delay of fourteen (14) years in making the award for compensation by the Respondent, which in breach of the fundamental right which enshrined under Article 13 of The Federal Constitution.
>
> 2. The learned Court of Appeal Judges have erred in law and misdirected their mind that the compounded adjustment rate of 4% per annum for fifteen (15) years from the date of Section 47 Notice is adequate to compensate the long inordinate delay that have deprived the Appellants from utilizing their rightful compensation money at the earliest possible time.

[18] No mention however is made of para 1 of the leave question that 'Section 60 of the Sarawak Land Code (Cap 81) should be read in modification to be in line with Article 13 of the Federal Constitution, in cases of inordinate and unexplained delay of the State in conducting enquiry pursuant to Section 51 of the Sarawak Land Code, after evaluating the evidence in totality'.

[19] The main thrust of the appellants' argument is that not only were they deprived of the subject lands due to the acquisition by the State, but inadequate compensation was awarded as a result of, in the words of counsel, 'the draconian effect of the pre-Malaysia Day law which the Court of Appeal did not interpret in conformity with Article 13(2) of the Federal Constitution'. It was strenuously argued that the inordinate and unexplained delay in holding the inquiry had violated the appellants' fundamental rights under art 13 of the Federal Constitution, which provides:

> 13 Rights to property

A (a) No person shall be deprived of property save in accordance with law.

(b) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

B **[20]** Given the nature of the complaint, it is surprising that the appellants took no action to apply for judicial review to have the s 47 notice quashed. The s 47 notice therefore remains valid and the date thereof would still form the basis for assessing the market value of the subject lands in accordance with s 60(1)(a) of the Land Code. Such failure to have the s 47 notice quashed C soonest after the s 48 declaration was made was considered in *Ngu Toh Tung & Ors v Superintendent of Lands & Survey, Kuching Division, Kuching & Anor* [2006] 1 MLJ 142; [2006] 1 CLJ 30 where the Court of Appeal through Gopal Sri Ram JCA (as he then was) said:

D The appellants' repeated complaint before us is the long delay between the s 47 notice and the s 48 declaration was made. Since this is their case, they ought therefore to have moved the court in 1996 to have the s 47 notice quashed so soon after the s 48 declaration was made.

E **[21]** Comparison was made with s 8(4) of the West Malaysian Land Acquisition Act 1960 ('the Land Acquisition Act') which provides for a safeguard against inordinate delay but which s 60(1) of the Land Code does not provide for. Section 8(4) of the Land Acquisition Act is couched in the following language:

F (4) A declaration under subsection (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the Gazette in so far as it relates to any land or part of any land in respect of which the Land Administrator has not made an award under subsection 14(1) within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such G declaration in respect of such land or such part of the land shall terminate and be of no effect.

[22] The effect of sub-s (4) above is to invalidate an acquisition where there is inordinate delay by the Land Administrator. In support learned counsel cited H *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35; [1982] MLRA 624 where it was held by the Federal Court that a delay of seven years after the declaration of acquisition rendered the inquiry and subsequent proceedings null and void.

I **[23]** Learned counsel questioned why the safeguard under s 8(4) of the Land Acquisition Act is not made available to Sarawakians even though 59 years has passed since Malaysia Day in 1963. He said he is ashamed to say that the State Legislature has made no effort in passing similar amendment to s 60(1)(a) of the Land Code to rectify the 'injustice' to the citizens of Sarawak. He therefore

urged this court to keep in mind art 13(2) of the Federal Constitution when interpreting s 60(1)(a) of the Land Code.

[24] It was submitted that this is an exceptional case for this court to resort to the extraordinary approach in interpreting s 60(1)(a) of the Land Code so as to align it with art 13(2) of the Federal Constitution. This according to counsel is necessary not only to promote administrative efficiency but to provide Sarawakians with similar constitutional safeguard as their counterparts in West Malaysia.

[25] So as not to be sidetracked by side issues which may not require determination in dealing with the leave question, it needs to be reiterated that the controversy in the present case is over the conflict between *Jais bin Chee* and *Surianto*, which revolves round the interpretation to be given to s 60(1)(a) of the Land Code which provides as follows:

> (1) In determining the amount of compensation to be awarded for land resumed under this Part, the Court shall take into consideration the following matters *and no others* —
>
> (a) *The market value at the date of the publication of the notification under* section 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under section 48. (Emphasis added.)

[26] The provision is clear and unambiguous, that compensation is to be assessed by considering the market value at the date of the notification under s 47 of the Land Code or, if there is no such notification, the market value at the date of the declaration under s 48. In the present case there is no dispute that there was a notification issued under s 47 of the Land Code.

[27] There is sufficient adjective law on the subject of statutory interpretation. Suffice it if I refer to *Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors* [1988] 3 MLJ 82; [1988] 1 CLJ Rep 224 where the Supreme Court comprising Abdul Hamid Acting LP, Lee Hun Hoe CJ (Borneo), Hashim Yeop A Sani SCJ, Mohamad Yusoff and Gunn Chit Tuan JJ emphasized on the need to abide by the trite principle that in interpreting words of a statute, there is no room for the court to go beyond the express language of the statute where the words are clear. It must be given a literal interpretation. The purposive approach will only be applied if the words are capable of more than one interpretation, or if they are in conflict with other provisions of the same or other relevant statutes, or if giving a literal interpretation will lead to an absurdity.

[28] Sections 47 and 48 of the Land Code are reproduced below for context:

Section 47(1):

> (1) Whenever the Minister decides that land in any locality is likely to be needed for any of the purposes specified in Section 46, the Superintendent shall cause a public notice of the substance of such decision to be given at convenient places in such locality, and thereupon any officer or other person either generally or specially authorized by the Minister in this behalf and his servants and workmen may enter upon such land and may survey, bore, take levels, set out and mark boundaries, and do all other acts necessary to ascertain whether the land is suitable for such purpose.

Section 48(1) and (2):

> (1) Whenever it appears to the Minister that any particular land is needed for any of the purposes specified in section 46, the Minister shall make a declaration to that effect.
>
> (2) The declaration shall be posted in the office of the Superintendent and the District Officer and shall state the situation of the land, the particular purpose for which it is needed, its approximate area and all other particulars necessary for identifying it and also the place where a plan of the land, if any has been made, may be inspected. Such declaration shall be conclusive evidence that the land is needed for the purpose specified therein.

[29] In deciding not to give effect to the mandatory requirement of s 60(1)(a) of the Land Code, ie that compensation is to be assessed by considering the market value at the date of the s 47 notice, the Court of Appeal in *Jais bin Chee* gave the following reasons through the judgment of David Wong Dak Wah JCA (as he then was):

> [25] We are fully aware of the wordings in s 60 of the Sarawak Land Code dictate that the 1996 valuation is to be used as the compensation to be paid. As we mentioned above, all statutes be in (sic) federal or state must be read having regard to the Federal Constitution and in this case, art 13.
>
> [26] In *B Surinder Singh v The Government of the Federation of Malaya* [1962] 1 MLJ 169; [1962] 1 LNS 14, this is what Lord Denning when delivering the advice of the Board said:
>
> > In a conflict of this kind between the existing law and the Constitution, the Constitution must prevail. The court must apply the existing law with such modifications as may be necessary to bring it into accord with the Constitution.
>
> [27] This court in *Kerajaan Negeri Selangor & Ors v Sagong Tasi & Ors* [2005] 6 MLJ 289; [2005] 4 CLJ 169, was faced with a state legislation which gave the state government a discretion whether or not to give compensation for acquisition of landed property which would contravene art 13 of the Federal Constitution. This is how Gopal Sri Ram JCA (as he then was) resolved the inconsistency:
>
> > The way in which s 12 is to be brought into conformity with the Constitution is to make it yield to art 13(2) which reads:

> 13(2) No law shall provide for compulsory acquisition or use of property without adequate compensation, that is achieved by not reading the words 'the State Authority may grant compensation therefor' as conferring a discretion on the State Authority whether to grant compensation or not. For otherwise it would render subsection 12 of the 1954 Act violative of art 13(2) and void because it will be a law that provides for the compulsory acquisition of property without adequate compensation. A statute which confers a discretion on an acquiring authority whether to pay compensation or not enables that authority not to pay compensation. It is therefore a law that does not provide for the payment of adequate compensation and that is why s 12 will be unconstitutional. Such a consequence is to be avoided, if possible, because a court in its constitutional role always tries to uphold a statute rather than strike it down as violating the Constitution. As Jeeva Reddy J said in *State of Bihar and Others v Bihar Distillery Ltd AIR* [1997] SC 1511:
>
> The approach of the court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it.
>
> How then do you modify s 12 to render it harmonious with art 13(2)? I think you do that by reading the relevant phrase in s 12 as 'the State Authority shall grant adequate compensation therefore'. By interpreting the word 'may' for 'shall' and by introducing 'adequate' before compensation, the modification is complete. I am aware that ordinarily we, judges, are not permitted by our own jurisprudence, to do this. But here you have direction by the supreme law of Federation that such modifications as the present must be done. That is why we can resort to this extraordinary method of interpretation.
>
> [28] Applying the above principles set out above, we are of the considered view that s 60(1)(a) of the Sarawak Land Code read with art 13 of the Federal Constitution demands that the s 51 inquiry for compensation to be paid be conducted within a reasonable time frame so that an 'adequate compensation' can be ascertained. In the case at hand, the s 51 inquiry was not conducted until some nine years later. In order not to infringe art 13 of the Federal Constitution, we are constrained to find that the 'adequate compensation' to be the amount valued as at 12 August 2005.

[30] Of pertinence to note is that the Court of Appeal did not rule, correctly in my view, that s 60(1)(a) of the Land Code is unconstitutional. It merely decided that s 60(1)(a) must be read with art 13(2) of the Federal Constitution to ensure that the amount of compensation to be paid to the land owner must be 'adequate', ie fair and reasonable. Therefore, the question of the constitutionality of s 60(1)(a) does not arise at all.

[31] Obviously the provision is not inconsistent with art 13(2) of the Federal Constitution for it to be declared void under art 4(1) as it is not a law that provides for compulsory acquisition without adequate compensation. Delay in

making an award cannot be equated with unconstitutionality. In any event, as I shall explain later in this judgment, s 60(1)(a) of the Land Code is not a law that is subject to modification under art 162(6) of the Federal Constitution.

[32] In departing from *Jais bin Chee*, the Court of Appeal panel in *Surianto*, which comprised Idrus Harun JCA (later Attorney General of Malaysia), Tengku Maimun Tuan Mat JCA (now Chief Justice of Malaysia) and Ahmadi Asnawi JCA, unanimously decided that where there is delay in the award of compensation, the market value of the acquired land should be assessed at the date of the s 47 notification and not at the date of the s 48 declaration. This is how the court dealt with the matter:

> [28] The decision in *Jais bin Chee*, in our opinion has the effect of altering the mandatory requirement of s 60(1)(a) in cases where there is undue delay in making the award of compensation. Needless to say that it is the court's duty as an interpreter of legislation, to construe the provisions in question and arrive at the legal meaning primarily intended by Parliament when the law is plain. The section as it stands is not violative of art 13 of the Federal Constitution. It is not being challenged on the basis that s 60(1)(a) is unconstitutional or otherwise repugnant to art 13 cl (2) (*Ong Gaik Kee*'s case; *Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan* [2009] 1 CLJ 13; *Keck Seng (Malaysia) Berhad v Pentadbir Tanah Johor Bahru*. Neither is there any challenge by the respondents that the Land Code does not provide for adequate compensation as dictated by art 13 cl (2). The law, we apprehend, is that it is only in a situation where the existing law is in conflict with the Constitution that the court is empowered under art 162 cl (6) to modify such law to bring it into accord with the provisions of the Constitution. This is clear in the authorities such as B *Surinder Singh Kanda v The Government of The Federation of Malaya* [1962] 1 MLJ 169; [1962] 1 LNS 14 and *Kerajaan Negeri Selangor & Ors v Sagong Tasi & Ors* [2005] 6 MLJ 289; [2005] 4 CLJ 169.
>
> [29] Accordingly, with respect, while we agree with *Jais bin Chee*, that a delay in making the award of compensation might cause the compensation awarded to be inadequate, following the Federal Court's decision in *Ong Gaik Kee*, we do not think that it is necessary to go so far as to invoke cl (2) of art 13 for the purpose of determining the fair market value of the subject lands and thus adequate compensation to be awarded to the respondents. We are of the opinion that the respondents can still be adequately compensated within the existing legal framework provided for in Part IV of the Land Code, not by altering the valuation date which is mandatorily required to be used under s 60(1)(a), but instead by determining the market value of the subject lands in accordance with the said section and from this base market value, with admissible evidence adduced that injustice and inadequacy of compensation proven, a favourable and upward adjustment is made to increase the compensation in view of the 12 years lapse between the date of the publication of notice under s 47 and the date of the inquiry under s 51. In this manner the award will be truly reflective of adequate compensation and at the same time in compliance with ss 60(1)(a) and 66 of the Land Code.

> [30] By altering the date of the s 47 notice to a later date would in effect tantamount to the learned judge amending it which she is clearly bereft of any power to do so and as such, in law should not be countenanced. Accordingly, we are driven to the inevitable finding that the learned judge had misdirected herself in this fundamental respect when Her Ladyship adopted the date of 17 May 2007 as the valuation date for the purpose of determining the adequate compensation to be awarded. In our judgment and to adopt the words of Justice Linton Albert in *Lim Guik Hion & Toh Lee Hua v Superintendent of Lands & Surveys Kuching Division* [2010] MLJU 749; [2010] 1 LNS 751, 'the court has no discretion, under whatever guise, and estoppel included to flout the express provisions of a statute and hence full force of s 60(1)(a) must be brought to bear.

[33] The court then went on to cite with approval the unreported High Court case of *Tan Kheng Pang v Superintendent of Lands & Surveys* (Land Reference No 15–3–2007–III) (unreported) consolidated with *Tan Kheng Pang v Superintendent of Lands & Surveys* (Land Reference No 15–4–2007–I) (unreported). In that case there was a lapse of 32 years between the date of the s 47 notice and the date of resumption of the acquired land under s 48. The High Court held that the relevant date to determine the market value was the date of the s 47 notice, and to make up for the loss of 32 years, accepted the adjustment made by the respondent's valuer when she generously compounded 8%pa to the value of the land.

[34] In urging this court to resolve once and for all the conflict between *Jais bin Chee* and *Surianto*, learned counsel for the appellants pointed to the conflicting decisions of the court in the following cases, the first two applying the strict interpretation of statute whilst the last two interpreting statute in modification with art 13 of the Federal Constitution:

(a) *Superintendent of Lands & Surveys, Fifth Division, Limbang v Lim Teck Hoo & Anor* [1980] 1 MLJ 58; [1979] 1 MLRA 9 (FC);

(b) *Superintendent of Lands & Surveys Samarahan Division v Surianto bin Abdul Hamid & Anor* [2016] MLJU 1712; [2016] 3 CLJ 591; and

(c) *Pemungut Hasil Tanah Daerah Barat Daya, Penang v Kam Gin Paik & Ors* [1986] 1 MLJ 362; [1986] 1 CLJ 33 (PC); and

(d) *Jais bin Chee.*

[35] We were urged upon to follow the principle laid down in the last two cases which favour an interpretation that allows for a modification of s 60(1)(a) so as to bring it in line with art 13(2) of the Federal Constitution. The decision of this court in *Superintendent of Land and Survey Department Kuching-Divisional Office & Anor v Ratnawati bt Hasbi Mohamad Suleiman* [2020] 2 MLJ 553; [2020] 2 CLJ 425; [2020] 1 MLRA 385 ('Ratnawati') was referred to by both parties but I agree with learned counsel

for the appellants that the case has no direct bearing on the question of law raised in the present case as it was not a case that arose from a land reference in the High Court.

[36] It was a writ action seeking for a declaration that the first appellant's failure to comply with the mandatory procedural requirements of ss 49, 52, 53 and 54 of the Land Code in the resumption process without any notice given to the respondent and without her knowledge was wrongful. Therefore, whatever the court said on s 60(1)(a) of the Land Code is obiter at best.

[37] Having considered the conflicting decisions of the Court of Appeal in *Jais bin Chee* and *Surianto* carefully, I am inclined to agree with *Surianto*, which incidentally is consistent with the following cases:

(a) *Superintendent of Lands and Surveys, Kuching Division v Robert Lee Chang Hock* [2017] 1 MLJ 511 (CA) which followed *Surianto*;

(b) *Buan Joong Sdn Bhd v Superintendent of Lands & Surveys Kuching Division* [2005] 5 MLJ 404; [2005] 2 CLJ 910 (CA); and

(c) *Superintendent of Lands & Surveys, Fifth Division, Limbang v Lim Teck Hoo & Anor* [1980] 1 MLJ 58; [1979] 1 MLRA 9 (FC).

[38] In *Robert Lee Chang Hock*, it was held by the Court of Appeal, per Tengku Maimun Tuan Mat JCA (now CJ) delivering the judgment of the court that:

> (1) Whatever stance taken by the appellant in the High Court could not defeat the statutory requirement as expressly stipulated in s 60(1)(a) of the Code. It was not for the appellant to waive legislative requirement. The learned High Court judge erred in using the date of inquiry as the valuation date to determine the compensation to be paid to the respondent as the valuation date to determine the compensation to be paid to the respondent as based on the plain reading of ss 60(1)(a) and 66 of the Code, the valuation date should be s 47 notification. Thus, the additional sums awarded by the learned High Court judge on the basis of the date of inquiry was without legal justification and could not be sustained (see paras 26–27 & 30).
>
> (2) It was the date of s 47 notification and no others that ought to be considered in determining the compensation to be awarded to the respondent. That being the case, it could not be said that the end result would not be drastically affected given that there was a gap of 12 years between s 47 notification and s 48 declaration (see para 31). (Emphasis ours).

[39] In *Buan Joong Sdn Bhd* the Court of Appeal endorsed the following reasoning by the High Court:

> However, Mr Kho Lit Kiat, learned counsel for the appellant, argued that 1992, the year of the publication of the s 48 notification should be taken because the s 47

notification adverted to the likelihood of acquisition for purposes which are not the same as that mentioned in s 48 notification and that only part of the land was stated to be affected. He did not cite any authority in support of his argument. I do not think he can find any, because, the plain words of s 60(1) do not permit such an interpretation. The relevant part of s 60(1) says that 'the Court shall take into consideration: (a) the market value at the date of the publication of the notification under s 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under s 48'. In this case there was s 47 notification, clearly it cannot argue otherwise that the year 1990, the date of the s 47 notification, should be taken in s 60(1).

[40] *Lim Teck Hoo* is a decision of the then Federal Court which was not referred to by the learned High Court judge in his judgment. Nor was it referred to by the Court of Appeal in *Jais bin Chee*, and *Surianto* merely made a fleeting reference to the case. A more detailed discussion on the case was undertaken by the majority in *Ratnawati* but as I said the decision has no direct bearing on the issue before us in the present appeal. Therefore I do not wish to say anything further on the case.

[41] In my view *Lim Teck Hoo* being a decision of the apex court on s 60(1)(a) of the Land Code is the authority to resolve the conflict between *Jais bin Chee* and *Surianto*. The facts of the case as set out in the headnote are as follows. A notification under s 47 of the Land Code stating that the lands were likely to be required for public purposes was published on 13 March 1971. Subsequently four different declarations were made under s 48 stating that the lands were needed for public purposes and the declarations were published in the *Gazette* on 8 August 1974, 10 October 1974, 7 August 1975 and 11 November 1976.

[42] The learned trial judge held that the proper date for determining the market value was not the date on which notification under s 47 was published, but the various dates on which the declarations under s 48 were *gazetted*. In his judgment the learned judge said that as soon as a declaration under s 48 was issued, the notification under s 47 became fully exhausted. Accordingly he made awards based on the market value of the lands at the dates of the declarations under s 48. However he also made an alternative assessment of the market value as at the date of the publication of the notification under s 47.

[43] The appellant appealed on the ground that the learned judge was wrong to say that the material date for the determination of compensation should be based on s 48. On the other hand the respondent submitted that the learned judge was right to make the awards under s 48 but contended that the awards were inadequate.

[44] In allowing the appellant's appeal, it was held that the learned trial judge

should, in accordance with s 60 of the Land Code, have awarded the owner the assessment in accordance with the date of notification under s 47 and not in accordance with the declarations under s 48. In the course of his judgment Lee Hun Hoe CJ (Borneo) made the following pertinent observations:

> I take the view that under the Sarawak legislation it is possible for more declarations than one under s 48 to be made in respect of land comprised in a notification under s 47. I am aware where compensation has to be determined with reference to the material date under s 47 any delay in making a declaration under s 48 is bound to cause the person whose land is to be acquired to suffer pecuniary loss if land prices have arisen between the period of notification under s 47 and declaration under s 48. The delay would be longer if successive declarations under s 48 could be made in respect of land comprised in the notification under s 47. It could also work in the reverse if the land prices tumble. I hope the government would try to minimize the delay in making the declaration or declarations. One way of preventing long delay would be to fix a time whereby notifications under s 47 would automatically lapse. Another way is to withdraw resumption under s 79 as soon as the land is no more required for public purpose. In my view as long as the publication of the notifications under s 47 exists there is nothing to prevent the making of more declarations than one under s 48 involving the acquisition of a large area as in this case.

[45] I see no reason why this court should depart from *Lim Teck Hoo.* The case is directly on point as it deals with the same provision of law that this court is dealing with in the present appeal, ie s 60(1)(a) of the Land Code. I am mindful that the court there was not dealing with any constitutional issue but I do agree with *Surianto* that it is unnecessary to go so far as to invoke art 13(2) of the Federal Constitution to determine adequacy of compensation in a land reference, following *Ong Gaik Kee*, a Federal Court decision.

[46] As suggested by Lee Hun Hoe CJ (Borneo) in *Lim Teck Hoo*, one way of preventing long delay would be to fix a timeline whereby notifications under s 47 of the Land Code would automatically lapse. That of course must be left to the wisdom of the State Legislature as was done by Federal Legislature in respect of the Land Acquisition Act.

[47] Thus, while the learned High Court judge was at liberty to follow either *Jais bin Chee* or *Surianto* (he chose to follow *Jais bin Chee*), he was bound by the doctrine of stare decisis to abide by *Lim Teck Hoo*, and so was the Court of Appeal in *Jais bin Chee*. There is a possibility that *Lim Teck Hoo* was not brought to the attention of the learned High Court judge. He would in all probability have decided differently if it was.

[48] *Jais bin Chee* it will be noted was decided on the footing that s 60(1)(a) of the Land Code can be modified under art 162(6) of the Federal Constitution, relying heavily on the judgment of the Court of Appeal delivered

by Gopal Sri Ram JCA (as he then was) in *Kerajaan Negeri Selangor & Ors v Sagong Bin Tasi & Ors* [2005] 6 MLJ 289; [2005] 4 CLJ 169. In *Ratnawati*, David Wong Dak Wah (by then CJSS) who wrote the judgment in *Jais bin Chee* again relied on *Sagong Tasi* in his dissenting judgment.

[49] Article 162(6) of the Federal Constitution reads as follows:

> (6) Any court or tribunal applying the provision of any existing law which has not been modified on or after Merdeka Day under this Article or otherwise may apply it with such modifications as may be necessary to bring it into accord with the provisions of this Constitution.

[50] Undoubtedly the appellants' contention that the court should modify s 60(1)(a) of the Land Code to bring it into accord with art 13(2) of the Federal Constitution is inspired by *Jais bin Chee* and to a certain extent *Ong Gaik Kee*. The question is whether modification of the Land Code under the Article is at all permissible. *Ong Gaik Kee* is a case on the Land Acquisition Act where the relevant provisions are wholly at variance with s 60(1)(a) of the Land Code. There the Federal Court was dealing amongst others with para 1(1) of the First Schedule to the Land Acquisition Act which provides:

> Market value
>
> 1(1) For the purposes of this Act the term 'market value' where applied to any scheduled land mean the market value of such land —
>
> (a) at the date of publication in the *Gazette* of the notification under section 4, provided that such notification shall within twelve months from the date thereof be followed by a declaration under section 8 in respect of all or some part of the land in the locality specified; or
>
> (b) in other cases, at the date of the publication in the *Gazette* of the declaration made under section 8.

[51] The case is therefore of no assistance to the appellants. The operative words in art 162(6) of the Federal Constitution are 'existing law', which art 160 defines as 'any law in operation in the Federation or any part thereof immediately before Merdeka Day' and the words 'Merdeka Day' is defined by the same Article as 'the thirty-first day of August, nineteen hundred and fifty-seven' (31 August 1957). The word 'Federation' on the other hand means the Federation established in accordance with the Federation of Malaya Agreement 1957 (see s 66 of the Interpretation Acts 1948 and 1967).

[52] What this means is that the court's power of modification under art 162(6) of the Federal Constitution is only exercisable in respect of laws that were in operation in the Federation or any part thereof immediately before 31 August 1957 and not after. Section 60(1)(a) of the Land Code is not such

law. It is a law that came into operation on 1 January 1958 (after Merdeka Day) and when Sarawak was not even part of the Federation. It is therefore not an 'existing law' within the meaning of art 162(6) of the Federal Constitution. This provides a complete answer to the appellants' argument that s 60(1)(a) of the Land Code should be modified to be in line with art 13(2) of the Federal Constitution. The leave question had wrongly described s 60 of the Land Code as a pre-Merdeka law when it is not.

[53] I mentioned that the Land Code came into force on 1 January 1958, which is four months after Merdeka Day on 31 August 1957. On Malaysia Day, the Land Code, being a law that the State Legislature had the legislative competency to pass, continues to have effect as explained by Suffian LP in *Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v Datuk James Wong Kim Min* [1976] 2 MLJ 245; [1976] 1 LNS 129:

> But the advent of Malaysia Day did not however automatically repeal Sarawak laws; on the contrary, they were expressly saved by s 73 of the Malaysia Act, which by sub-s (5) provided that the Sarawak laws were 'present laws' and by sub-s (1) that 'they shall, on or after Malaysia Day, have effect according to their tenor, and be construed as if this Act has not been passed.

[54] Learned counsel for the respondent ventured to argue that only the Governor (now known as Yang di-Pertua Negeri) has the power to modify any existing State law. The basis for the argument is arts 46(3)(a) and 46(4)(a) of the Constitution of the State of Sarawak ('the State Constitution') which we reproduce below for ease of reference:

> Article 46(3)(a)
>
> (3)(a) The Governor of the Colony of Sarawak may by order made at any time before Malaysia Day make such modifications in any existing law as appear to him to be necessary or expedient in consequence of the promulgation of this Constitution or the passing of the Malaysia Act.
>
> Article 46(4)(a)
>
> (4)(a) The Governor may by order at any time during the period of two years after the commencement of this Constitution make such modifications in any existing law, to the extent that it is by virtue of the provisions of the Federal Constitution treated as a State law, as appear to him to be necessary or expedient in consequence of the promulgation of this Constitution or the passing of the Malaysia Act.

[55] As for the meaning of 'existing law', art 44 of the State Constitution defines it to mean any law having effect as part of the law of the Colony of Sarawak or any part thereof immediately before the commencement of the State Constitution. The State Constitution which is Annexure C to the Malaysia Agreement came into force on Malaysia Day, 16 September 1963. So the cut off date is 16 September 1963.

[56] With all due respect to learned counsel for the respondent, I am unable to accede to the argument. From a plain reading of art 46(3)(a) of the State Constitution, a modification order under the article could only have been made by the Governor before Malaysia Day and likewise a modification order under art 46(4)(a) could only have been made by him within two years after the commencement of the State Constitution. Both periods have long gone by.

[57] In the alternative it was submitted that laws of Sarawak such as the Land Code may be modified by the Yang di-Pertuan Agong at the request of the Yang di-Pertua Negeri of Sarawak under s 74(4) of the Malaysia Act 1963 ('MA63'). The provision reads:

> (4) In any present law of a Borneo State or of Singapore which is to be treated as State law the Yang di-Pertuan Agong may by order make (in addition to any modifications made under subsection (1)), such modifications as may be requested by the Governor and appear to him to be necessary or expedient in consequence of the passing of this Act.

[58] The contention was that the power of modification of 'present law' such as the Land Code is not vested in the courts by art 162(6) of the Federal Constitution but in the Yang di-Pertuan Agong by s 74(4) of the Malaysia Act, exercisable by His Majesty at the request of the Governor (the Yang di-Pertua Negeri).

[59] There is merit in the argument. Given the clear language of s 74(4) of MA63, I agree with Dato Sri JC Fong for the respondent that the modifications can only be made by the Yang di-Pertuan Agong at the request of the Yang di-Pertua Negeri of Sarawak or the Yang di-Pertua Negeri of Sabah as the case may be. Such power of modification of State laws like the Land Code is not conferred on the courts as it is not a law that comes within the purview of art 162(6) of the Federal Constitution.

[60] With due respect, *Jais bin Chee*'s reliance on *Sagong Tasi* in interpreting s 60(1)(a) of the Land Code is misconceived as in that case the Court of Appeal was dealing with s 12 of the Aboriginal Peoples Act 1954 which, unlike s 60(1)(a) of the Land Code, is a pre-Merdeka law and therefore modifiable under art 162(6) of the Federal Constitution.

[61] For the reasons given, my answer to the leave question is in the negative as s 60(1)(a) of the Land Code is not a pre-Merdeka law and therefore not an 'existing law' that may be modified under art 162(6) of the Federal Constitution. That power of modification lies with the Yang di-Pertuan Agong at the request of the Yang di-Pertua Negeri of Sarawak or Sabah as provided by s 74(4) of the Malaysia Act and not with the courts.

[62] In any event I find no merit in the appeal as the appellants have been adequately, fairly and reasonably compensated by having the compensation sum adjusted upward due to the delay in making the award. No injustice has been occasioned by the decision of the Court of Appeal.

[63] My learned sisters have read this judgment in draft and have agreed with it except that Justice Mary Lim Thiam Suan has a different view on the proper way to interpret statutes (para 1 of her supporting judgment). Accordingly the appeal is dismissed. Parties to bear own costs.

Mary Lim FCJ (delivering supporting judgment of the court):

[64] I have read the draft judgment of my learned brother and while I agree with the conclusion reached for the reasons given (save for the view on statutory interpretation), that is, that the appeal must stand dismissed, these are my further reasons.

FACTUAL BACKGROUND

[65] The appellants' lands were resumed by the respondent through a notice issued under s 47 of the Land Code of Sarawak (Cap 81) and dated 16 July 1997. The effect of such a notice is to put all, especially the landowners, that the Minister had decided that the appellants' lands were 'likely to be needed for any of the purposes specified in s 46'. Such a notice authorised the lawful entry onto the appellants' lands for the purpose of survey, boring, taking of levels, setting out and marking boundaries as well as doing 'all other acts necessary to ascertain whether the land is suitable for such purpose'. That, as was mentioned, was in 1997.

[66] It was not until some 12 years later on 2 July 2009 that the Minister proceeded to declare under s 48 of the Land Code that the appellants' lands were indeed 'needed for any of the purposes specified in s 46'. The purpose identified was 'for the purpose of Sungai Sarawak Flood Mitigation Channel'. The purpose and legality of this declaration and hence the resumption was not challenged by the appellants and is thus not in issue. What was instead challenged by the appellants was the adequacy of compensation awarded by the Superintendent.

[67] Returning to the facts, the Superintendent conducted an inquiry under s 51. This, ultimately led to an award of compensation on 21 November 2011.

[68] The appellants accepted the award under protest. They then applied under s 56 to have their objection referred to the High Court for determination. The Superintendent did so accordingly.

[69] In the statement prepared by the Superintendent under s 57, it is quite evident that the appellants' basis of objection was filed under s 71(2), that it was in respect of the sufficiency of the amount awarded as compensation.

AT THE HIGH COURT

[70] Before the High Court, the appellants contended that the compensation was inadequate. According to the learned judge, the only issue to be determined was whether the compensation to be awarded should be based on the value of the appellants' lands at the date under ss 47 or 48 notice. Upon answering that question would then arise the matter of quantum of compensation to be awarded — see para [8] of the grounds of decision of the High Court.

[71] In answering the question, the learned judge preferred to follow the decision of the Court of Appeal in *Jais bin Chee & Ors v Superintendent of Lands and Surveys Kuching Division, Kuching* [2014] 6 MLJ 439; [2014] 3 CLJ 467 instead of a later decision of the same Court in *Superintendent of Lands & Surveys Samarahan Division v Surianto bin Abdul Hamid & Anor* [2016] MLJU 1712; [2016] 3 CLJ 591.

AT THE COURT OF APPEAL

[72] The Court of Appeal allowed the appeal and restored the award of compensation made by the Superintendent. According to the Court of Appeal, the Superintendent was obliged to award compensation based on the values assessed by reference to the date of the s 47 notice, and not by reference to the date of the s 48 notice.

DETERMINATION

[73] The appellants' challenge in court at all material time was always over the sufficiency of compensation. It was never a question of the legality of the resumption exercise. This is why land reference proceedings are initiated — see s 56 of the Land Code dissatisfaction:

(a) on the measurement of the land resumed;

(b) the amount of compensation; and

(c) the persons to whom it is payable or the apportionment of the compensation among the persons interested.

[74] Had the challenge been about the validity of the resumption, then such challenge must be a frontal or direct challenge in entirely different proceedings, whether through judicial review applications as was the case of *Pemungut Hasil*

Tanah, Kuantan v Oriental Rubber & Palmoil Sdn Bhd [1986] 1 MLJ 39 and *Pemungut Hasil Tanah Daerah Barat Daya, Penang v Kam Gin Paik & Ors* [1986] 1 MLJ 362; [1986] 1 CLJ 33 or for declaratory orders as in *Superintendent of Land and Survey Department Kuching-Divisional Office & Anor v Ratnawati bt Hasbi Mohamad Suleiman* [2020] 2 MLJ 553; [2020] 2 CLJ 425; [2020] 1 MLRA 385.

[75] Collateral attacks have always been frowned upon by the court; and the present circumstances are no different. This was reminded by this court in *Ann Joo Steel Bhd v Pengarah Tanah dan Galian Negeri Pulau Pinang & Anor and another appeal* [2020] 1 MLJ 689; [2019] 9 CLJ 153. Although discussed in the context of a court order, that until and unless such order is set aside in direct proceedings, the order stands valid and enforceable and cannot be the subject of some collateral attack; it is equally true in the case of compulsory resumption of land. That until and unless a notice of resumption has been set aside on any reason including a delay in holding an inquiry to determine the amount of compensation, the notice of resumption stands valid.

[76] I make this observation as the arguments before us really seeks to challenge the resumption by reason of delay but for reasons best known by the appellants themselves, the proper and appropriate steps were not taken at the material time. In my view, the submissions urging this court to deploy the power of modification under art 162(6) of the Federal Constitution are not feasible not only for the reasons ably discussed by my learned brother but is also questionable.

[77] Therefore, the issue of compensation, and that is the single issue before us, must be addressed within the confines of the Land Code. Since the complaint of the appellants is about the adequacy of compensation, it would make sense that the appellants argued for a valuation of the subject lands at the date of the s 48 notice while the respondent pressed for a valuation by reference to the s 47 date. Logically, the appellants' must have been unsuccessful at the inquiry.

[78] However, this was not what transpired. And, this is where I must remind all counsel of their primary duty as officers of the court to ensure that full facts are duly and properly disclosed. A scrutiny of the records of appeal reveal some basic but material and relevant facts which ought to have been brought to our attention, but were not. These facts throw a completely different light on the appellants' case, quite different from that portrayed.

[79] Going back to the salient facts as to the appellants and the lands resumed.

[80] The appellants were, until the resumption, the registered proprietors of two parcels of land described as Lot 4000 Block 17 Salak Land District ('Lot 4000') and Lot 5052 Block 17 Salak Land District being part of Lot 4004 Block 17 Salak Land District ('Lot 4004') (collectively 'the subject lands'). The subject lands comprised a 60-year leasehold interests from 27 July 1962 and expiring on 31 December 2022. At the time of purchase, the appellants had less than half of the remaining years of the relevant lease. On record, unless renewed, the leases have since expired.

[81] The appellants had purchased the subject lands on 23 December 1996 at a consideration of RM210,000, equivalent to RM102,754,81 per hectare. This is stated at para 18.0 of the appellants' own valuation report. This works out to RM10.30 per sqmt as explained by the government valuer in her witness statement and, as cited by the Court of Appeal at para [39] of its grounds of judgment. See also p 16 of the appellants' valuation report.

[82] Before the Superintendent who was conducting the inquiry, both the appellants' valuers and the government valuer offered their respective opinion on the market value as at both dates, be it under the ss 47 or 48 notice. This indicates that everyone involved was fully aware of the delay and were already offering their views on the appropriate value(s) so that the Superintendent could determine the amount of compensation.

[83] After offering the best comparative value of RM17.50 per sqmt and recognizing the matter of delay, the government valuer recommended at paras 5.7 and 6.2 of the report, a compounded rate of interest at 4%pa for 15 years till the date of resumption on 9 January 2012 calculated by reference to the date of the notice under s 47. The market value of the subject lands was then opined to be RM31.50 per sqmt, increased from RM17.50 per sqmt. As for the market value calculated by reference to the s 48 notice, the government valuer opined that the appropriate market value was also within the range of RM30 per sqmt to RM32 per sqmt — see paras 7.5 and 7.7 of the report.

[84] On the other hand, the appellants' valuation report offered the value of RM10.30 per sqmt for a valuation under the s 47 notice without the element of interest; and values of RM41 per sqmt and RM42 per sqmt for a valuation under the s 48 notice. These latter values were based on a transaction in 2007, a sale closest to the s 48 notice and said to be the most appropriate comparative valuation.

[85] The Superintendent awarded compensation for the subject lands based on the value of RM32 per sqmt.More than that, the Superintendent stated that this was a valuation under s 48 — see para 6.1 of the statutory statement filed by the Superintendent under s 57 of the Land Code. This was despite knowing

A that s 60(1)(a) required the material date to be as at the date of the publication of the s 47 notice since there was such a notice to begin with.

[86] At the High Court, the learned judge disagreed with the award of the Superintendent. His Lordship rejected the opinion and exercise of upward adjustment by the government valuer taking the view that 'even with any upward adjustment, the amount of compensation would still be far less than the value of the land as at s 48 notice'. With this, the learned judge proceeded to accept the valuation offered by the appellants. The award was increased to RM333,512.30 and the respondent was ordered to pay the difference between this sum and the sum already paid pursuant to the s 51 inquiry.

[87] At para [4] of the grounds of decision, the learned judge set our s 60(1)(a) of the Land Code. I noticed that His Lordship stated as follows:

> In determining the amount of compensation to be awarded for land resumed under this part, the Court *should* take the following matters and no others ... (Emphasis added.)

[88] It is unclear whether this was a typographical error for s 60(1)(a) states that the court 'shall' and not 'should' take into consideration the following matters and no others. Perhaps this may, in part, account for the route or line of reasoning embarked by the learned judge.

[89] Regardless, it was not open to the High Court to take the course of reasoning in view of the terms of the s 60. Recent decisions have pointed to s 17A of the Interpretation Acts 1948 and 1967 (Act 188) as suggesting and preferring the purposive approach; reading the object, purpose, and content of the provisions. Legislation is seen as enacted in clear terms conveying its intent and thus when it interpreting or construing their meaning, it should no longer be the three-step formula. See *Bursa Malaysia Securities Bhd v Mohd Afrizan bin Husain* [2022] 3 MLJ 450; [2022] 4 CLJ 657; *AJS v JMH and another appeal* [2022] 1 MLJ 778; [2022] 1 CLJ 331; *Tan Kah Fatt & Anor v Tan Ying* [2023] 2 MLJ 583; [2023] 2 MCLR 525 and *Datuk Bandar Kuala Lumpur v Perbadanan Pengurusan Trellises & Ors and other appeals* [2023] 3 MLJ 829; [2023] 5 CLJ 167. In the context of ss 47 and 48 read together with s 60(1)(a) of the Land Code, it is evident that these provisions are enacted to provide for adequate compensation of any land resumed by the State Government. Any delay in carrying out any exercise of determination of the adequacy of compensation does not alter that intent.

[90] I must add that since compensation for the resumption of the subject lands was actually under s 48, as specified by the Superintendent in the statutory statement, there was really no room or cause for the appellants to

complain. After all, the appellants were indeed paid compensation based on s 48. If anyone should complain, it would have been the acquiring authority.

[91] Although the Court of Appeal had allowed the appeal of the respondent and ordered compensation to be paid by reference to the date of the s 47 notice and supposedly restoring the award of the Superintendent, it must be pointed out that in actuality, it was not. The value under the s 47 notice was RM31.50 per sqmt whereas the value under the s 48 notice was a range between RM30 per sqmt to RM3 per sqmt. The Superintendent awarded compensation at the rate of RM32 per sqmt; clearly a value under s 48 and not s 47. And, this is what appears in the statutory statement of the Superintendent.

[92] Be that as it may, the market values of the subject lands were effectively similar, whether under the ss 47 or 48 notice. The appellants who had purchased the subject lands the year before the resumption notice under s 47 at the price of RM10.30 per sqmt was ultimately paid RM32 per sqmt for the resumption. Such compensation cannot be said to be inadequate by the terms of art 13 of the Federal Constitution even if the modification exercise can be undertaken in law.

[93] A final word, and this concerns the time taken for the appellants' objections to be referred to the High Court. I noticed that the appellants had filed their objections in 2011 but the reference was only filed seven years later, in 2018 and duly disposed by the High Court in the same year. For the same reasons so well-articulated by Lee Hun Hoe CJ (Borneo) in *Superintendent of Lands & Surveys, Fifth Division, Limbang v Lim Teck Hoo & Anor* [1980] 1 MLJ 58; [1979] 1 MLRA 9 and the implications to rights under art 13 of the Federal Constitution, I make this additional observation that all objections should be promptly referred to the High Court for determination.

[94] For the reasons added above, this appeal is dismissed.

Appeal dismissed.

Reported by Ashok Kumar